

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 6 2002

OFFICE OF
MANAGING DIRECTOR

Lee J. Peltzman
Shainis & Peltzman, Chartered
Counselors at Law
Suite 240
1850 M Street, N. W.
Washington, D.C. 20036

86-285

Re: KRZI, Inc. (KRZI-AM, Waco, Texas and KLRK-FM
(f/k/a KEYR-FM), Marlin, Texas); Fee Control No.
00000 RROG-02-007

Dear Mr. Peltzman:

We received your letter dated November 19, 2001, in which you proffer a copy of Mr. Goodall's August 6, 2001 petition to United States Bankruptcy Court, Western District of Texas. We assume in the absence of further explanation that you and your client offer the copy of the petition as evidence of financial hardship, such that the Commission should waive the fiscal year (FY) 1997 regulatory fees. As such, we construe the letter and attachment as an additional attempt to obtain a waiver of the debt owed by KRZI, Inc., for its subsidiary radio stations KRZI-AM and KEYR-FM (now licensed as KLRK). In that regard, and for the reasons set out below, we are dismissing the further request for waiver of the regulatory fees. As of March 8, 2002, the amount due for the FY 1997 regulatory fees is \$2,181.41. As we explained in our demand letter¹ dated October 10, 2001, this includes 5% interest and 6% penalty from December 10, 1999.

Background

Our letter to you dated October 10, 2001 explained the standard against which requests for waiver of regulatory fees are measured and why the Commission denied the request for reconsideration of the decision dated December 10, 1999. In summary, both that response and the earlier correspondence stated that Mr. Goodall failed to present a compelling case for financial hardship sufficient to excuse KRZI, Inc., from paying the regulatory fees for FY 1997 due on stations KRZI-AM and KEYR-FM. Now, more than five years after the date by which the fees were due² and more than a month after the Commission's demand for immediate payment, you submit an incomplete copy of Mr. Goodall's petition for bankruptcy under chapter 13 of the bankruptcy code.³ Notwithstanding the proffer of information concerning Mr. Goodall's financial status in relation to his consumer, non-business debt, your submission does not relate to the debt KRZI, Inc., owes for both stations KRZI's and KEYR's delinquent regulatory fees.

¹ See 31 U.S.C. § 3717; 31 CFR § 901.2.

² The fees were due no later than September 19, 1997.

³ Title 11, U.S.C. Chapter 13, Adjustment of Debts of an Individual with Regular Income.

Partial Chapter 13 Petition

Several reasons prevent the Commission from accepting the two-page form as demonstrating financial hardship or a legal excuse from paying the delinquent debt. First, the document is not complete. In addition to the voluntary petition form, every debtor seeking bankruptcy protection under chapter 13 is required to file with the court a list containing the name and address of each creditor, unless the petition is accompanied by a schedule of liabilities.⁴ Additionally, relevant schedules of assets and liabilities, a schedule of current income and expenditures, and other schedules of information are required to be filed with the court in a chapter 13 proceeding within 15 days of the filing of the petition.⁵ According to the information on the copy presented to the Commission, the petition was filed August 6, 2001; consequently, and as is required by bankruptcy rules, the list of creditors⁶ and the required schedules were available, and as one or the other were required to be filed with the petition, the document or documents also should have been submitted to the Commission on November 19, 2001. Moreover, you furnished no evidence that the court accepted the proceeding and that it approved the plan⁷ for payment.

Second, even if the submission was a court-certified complete copy of the petition, schedules, and plan⁸ with evidence that the court accepted it; nonetheless, evidence of a chapter 13 proceeding⁹ is insufficient to grant a waiver without the regulatee “fully document[ing] its financial position and show[ing] that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.”¹⁰ Different from Mr. Goodall’s case, the Commission’s decision to grant a waiver based on bankruptcy rests upon “[e]vidence of bankruptcy or receivership . . . [of the station], undergoing Chapter 11 reorganization[] or in receivership.”¹¹ Mr. Goodall’s chapter 13 proceeding is different from the forms of bankruptcy discussed by the Commission in its *Opinion and Order*. His petition provides no information concerning the status of the various radio stations that Mr. Goodall operates in his role as president and general manager of KRZI, Inc. Chapter 13 is a wage earner’s petition that permits the debtor to retain possession of estate property¹² and to use disposable income¹³ for an installment repayment

⁴ Federal Rules of Bankruptcy Procedure (F.R.B.P.), Rule 1007(a)(1).

⁵ F.R.B.P. Rule 1007(b) and (c).

⁶ A “complete” petition at the time of filing would have included the list of creditors or the schedules. Certainly, by the time the material was sent to the Commission, the filing should have included the petition, the schedules, and the plan.

⁷ 11 U.S.C. §§ 1321, 1322.

⁸ F.R.B.P., Rule 3015(b) (The Chapter 13 plan is filed either with the petition or within 15 days thereafter.).

⁹ 11 U.S.C. Chapter 13.

¹⁰ *Opinion and Order*, Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, FCC 95-257, 10 FCC Rcd 12759, 12761-12762, ¶ 13 (“Mere allegations or documentation of financial loss, standing alone, will not support a waiver request. Rather, we will grant a waiver only when the impact of the regulatory fee will affect a regulatee’s ability to serve the public.”)

¹¹ *Id.* at 12762, ¶ 14.

¹² 11 U.S.C. § 1306.

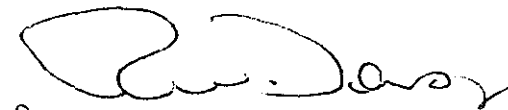
¹³ 11 U.S.C. § 1322.


plan¹⁴ over three to five years from the date of the petition. Based on your filing, it appears that Mr. Goodall petitioned for relief under chapter 13 as an individual with consumer/non-business debts. Moreover, he indicates he will have funds available for distribution to unsecured creditors.¹⁵ In the final analysis, this chapter 13 proceeding has little to do with the financial condition of KRZI, Inc., which has as components stations KRZI and KEYR.

Conclusion

Consequently, KRZI, Inc., and Mr. Goodall, as the corporation's president and general manager, remain obligated to pay the delinquent regulatory fees. Because KRZI, Inc., did not pay the required fees, the delinquent debt may be transferred to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or to apply other administrative sanctions. 47 CFR §§ 1.1161, 1.1164, 1.1940. KRZI, Inc., may be charged the accompanying administrative costs in addition to the interest required by 31 U.S.C. § 3717, which accrued from December 10, 1999, and the penalty of 6 percent per year of the unpaid amount. If you have any questions concerning this letter, you may write me at the Commission or call the Revenue and Receivables Operation Group at (202) 418-1995.

Sincerely,



 Mark A. Reger
Chief Financial Officer

Copies to:

Mr. Van D. Goodall, Jr., President
KRZI, Inc.
Post Office Box 8093
Waco, Texas 76714-8093

Erin B. Shank, Esquire
Erin B. Shank, P.C.
2309 Austin Avenue
Waco, Texas 76701

¹⁴ 11 U.S.C. § 1321.

¹⁵ United States Bankruptcy Court form, Voluntary Petition.

Shainis & Peltzman, Chartered

Counselors at Law

Suite 240

1850 M Street, N.W.

Washington, D.C. 20036

(202) 293-0011

Fax (202) 293-0810

e-mail: shainispeltzman@s-plaw.com

Aaron P. Shainis

aron@s-plaw.com

Lee J. Peltzman

lp@s-plaw.com

Of Counsel

William M. Fuross, III

bill@s-plaw.com

Robert J. Keller

rkeller@s-plaw.com

November 19, 2001

VIA FACSIMILE: 418-2843**And REGULAR MAIL**

Mr. Mark A. Reger
 Chief Financial Officer
 Office of Managing Director
 Federal Communications Commission
 445 12th Street, S.W.
 Washington, D.C. 20554

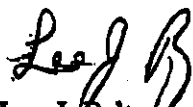
Dear Mr. Reger:

I am in receipt of your letter, dated October 10, 2001, received by fax today, November 16, 2001, signed by you denying the request filed on behalf of KRZI, Inc. for a waiver of the FCC's regulatory fees for the fiscal year 1997. You state in your letter that you have denied the company's request for waiver of its payment obligation because the licensee has provided insufficient evidence of its financial hardship and that it has failed to prove that it lacks sufficient funds to pay the Commission regulatory fee and continue to maintain service to the public. In making this judgment the Commission apparently refused to credit the licensee's assertion that it lacked financial resources and was teetering on bankruptcy.

This will inform you that I will be sending a copy of your letter to the licensee's bankruptcy counsel since the licensee, has, in fact, filed a Petition for Bankruptcy. I assume that bankruptcy counsel will inform the Commission as to the proper procedures for making its claim in Bankruptcy Court.

I would attempt to sum up my feelings as to the validity of your procedures but I believe the facts above speak abundantly for themselves. Thank you for your consideration.

Sincerely,



Lee J. Peltzman

Enclosure

Shainis & Peltzman, Chartered

Counselors at Law

Suite 240

1850 M Street, N.W.
Washington, D.C. 20036

(202) 293-0011

Fax (202) 293-0810

e-mail: shainispeltzman@s-plaw.com

Of Counsel

William M. DuRoss, III
bill@s-plaw.com

Robert J. Keller
rkeller@s-plaw.com

Aaron B. Shainis
aaron@s-plaw.com

Lee J. Peltzman
lee@s-plaw.com

December 13, 2001

VIA FACSIMILE: 418-2843

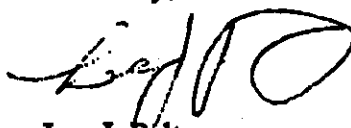
Mr. Tom Putnam
Office of Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Tom:

This will follow-up my letter of November 19, 2001 to Mark A. Reger, Chief Financial Officer at the Commission's Office of Managing Director. In that letter I made mention of the fact that the licensee of Station KRZI(AM), KRZX(AM), and KLRK(FM) had filed for bankruptcy. You asked for evidence that there had been such a filing. I am enclosing a copy of the Bankruptcy Petition filed in August, 2001. Should you have any questions about the bankruptcy, please contact Mr. Goodall's bankruptcy counsel, Erin B. Shank.

Thank you for your consideration of the situation.

Sincerely,



Lee J. Peltzman

Enclosure

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

Voluntary Petition

Debtor (If individual, enter Last, First Middle):

all, Van D.

Name of Joint Debtor (Spouse) (If individual, enter Last, First Middle):

Names used by the Debtor in the last 6 years
married, maiden, and trade names:

KRZI, KLRK and

K

All Other Names used by the Joint Debtor in the last 6 years
(include married, maiden, and trade names):

Security/Tax Identification No. (If more than one, state all):

8-7581

Social Security/Tax Identification No. (If more than one, state all):

Address of Debtor (No. and Street, City, State and Zip Code):

Box 8093

TX 76714

Street Address of Joint Debtor (No. and Street, City, State and Zip Code):

Address of Debtor (If different from street address):

Box 8093

TX 76714

County of Residence or of the Principal Place of Business:

Mailing Address of Joint Debtor (If different from street address):

Address of Principal Assets of Business Debtor (If different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

1a (Check any applicable box)

Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

Individual(s) ☐ Railroad

Corporation ☐ Stockbroker

Partnership ☐ Commodity Broker

Other _____

Chapter or Section of Bankruptcy Code Under Which
the Petition is Filed (Check one box)

☐ Chapter 7

☐ Chapter 11

☒ Chapter 13

☐ Chapter 9

☐ Chapter 12

☐ Section 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

Consumer/Non-Business ☐ Business

☐ Business

Filing Fee (Check one box)

☒ Full Filing Fee attached

☐ Filing Fee to be paid in installments (Applicable to Individuals only)
Must attach signed application for the court's consideration
certifying that the debtor is unable to pay fee except in installments.
Rule 1000(b). See Official Form 2.

Chapter 11 Small Business (Check all boxes that apply)

Debtor is a small business as defined by 11 U.S.C. Sec. 101.

Debtor is a sole proprietorship or a partnership with fewer than 100 employees.

11 U.S.C. § 1121(e) (Optional)

Financial/Administrative Information (Estimates only)

Debtor estimates that funds will be available for distribution to unsecured creditors.

Debtor estimates that, after any exempt property is excluded and administrative expenses are paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

1-16 ☐

17-49 ☐

50-99 ☒

100-199 ☐

200-499 ☐

500-Over ☐

Estimated Assets

0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☒ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ More than \$100 million ☐

Estimated Debts

0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☒ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ More than \$100 million ☐

THIS SPACE IS FOR COURT USE ONLY

01-61767

U.S. BANKRUPTCY COURT
BY DEPUTY

2001 AUG -6 P 1:36

FILED

Voluntary Petition (page 2)

page must be completed and filed in every case)

Name of Debtor(s): **Van D. Goodall****Prior Bankruptcy Case(s) Filed Within Last 8 Years (if more than two, attach additional sheets)**

Where Filed:	Case Number:	Date Filed:
Where Filed:	Case Number:	Date Filed:

Pending Bankruptcy Case(s) Filed by a Party, Spouse, or Relative of the Debtor (if more than two, attach additional sheets)

Debtor:	Case Number:	Date Filed:
	Relationship:	Judge:

Signatures**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

I am an individual whose debts are primarily consumer debts and have not filed for bankruptcy under chapter 7, 11, or 13 of Title 11, United States Code, under the relief available under each chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of Title 11, United States Code, specified in this petition.

Van D. Goodall

Van D. Goodall

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of Title 11, United States Code, specified in this petition.

X

Printed Name of Authorized Individual

Title of Authorized Individual

08/06/2001

Date

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X

Signature of Bankruptcy Petition Preparer

08/06/2001

Date

A bankruptcy petition preparer's failure to comply with the provisions of Title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both (11 U.S.C. § 110; 18 U.S.C. § 159).

Telephone Number (if not represented by an attorney)

08/06/2001

Date

Signature of Attorney

Erin B. Shank

Bar No. 01572908

Erin B. Shank, P.C.
19 Austin Avenue
Austin, Texas 76701

Phone No. (254) 296-1161

Fax No. (254) 296-1165

08/06/2001

Date

Exhibit A

be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 12 or 13 of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.

Exhibit A is attached and made a part of this petition.

Exhibit B

be completed if debtor is an individual whose debts are primarily consumer debts. I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner named in the foregoing petition that the debtor has the right to proceed under chapter 7, 11, 12, or 13 of Title 11, United States Code, and to elect the relief available under each such chapter.

08/06/2001

Date

Erin B. Shank

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FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 10 2000

AMD-FO
(CHRON)

DE OF
AGING DIRECTOR

Lee J. Peltzman, Esquire
Shainis & Peltzman, Chartered
Counselors at Law
1901 L Street, N.W., Suite 290
Washington, D.C. 20036

Dear Mr. Peltzman:

This is in response to your letter dated January 14, 2000, requesting reconsideration of our decision dated December 10, 1999. For the reasons stated below, your request is denied.

As you should know, on July 18, 1998, the Commission denied Mr. Goodall's initial request for a waiver of regulatory fees for fiscal year 1997. Mr. Goodall did not pay the fees within the allowed time, but instead submitted further request for relief with additional inadequate information. We provided a full explanation of the reasons for our denial and unequivocally informed Mr. Goodall that he failed to establish financial need from the information provided. Your correspondence does not change the result. Your discussion of the examples we highlighted in our letter to Mr. Goodall does not establish good cause for waiver of the regulatory fees due for fiscal year 1997.

Title 47, United States Code, §159(d) grants the Commission authority to waive the fee "in any specific instance for good cause shown, where such action would promote the public interest." The authority to waive fees is narrowly defined (*See Conference Report, H.R. Rep. No. 453, 99th Cong., 1st Sess. 423*), and it rests upon an established standard with two elements: whether an extraordinary or compelling reason has been demonstrated; and would the waiver of the fee override the public interest to collect the fee. The Commission's implementing rules are at 47 CFR §1.1166.

When we considered the merits of Mr. Goodall's petition, we found that it did not establish good cause for the waiver and it did not demonstrate that such waiver would promote the public interest. In that regard, each regulatee must properly document a request for waiver that will be evaluated against the Commission's standard.

Petitioners seeking a waiver, deferral, or reduction of a regulatory fee based on financial hardship may submit any relevant information in support of their request. We will review the supporting documents and base our ruling upon information submitted and any additional information available in our records. If petitioner presents a compelling case of financial hardship, no payment of the regulatory fee will be due. If the supporting materials do not present sufficient evidence of hardship, we will deny the petition. If the fee has not already been submitted, the petitioner will have 30 days to file its regulatory fee in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.

R&O, *In re Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346, at ¶ 35 (Jun 8, 1994). Later in response to request for clarification, we explained:

We will grant waivers of the fees on a sufficient showing of financial hardship. Mere allegations or documentation of financial loss, standing alone, will not support a waiver request. Rather we will grant a waiver only when the impact of the regulatory fee will affect a regulatee's ability to serve the public. It will be incumbent upon each regulatee to fully document its financial position and show it lacks sufficient funds to pay the regulatory fees and maintain its service to the public.

Memorandum Opinion and Order, *In re Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, at ¶ 13 (Jun 22, 1995).

Mr. Goodall's submission did not meet that standard, and our letter dated December 10, 1999 included the following caution;

However, submission of document numbers alone and without explanation is not enough. This is especially so when it appears that the plain entries are inflated and inaccurate. Yours did not substantiate a claim of financial hardship or establish a compelling need. The originating bases of your request are non-payment of Federal taxes in 1994 and local taxes from 1990. . . .

Because your requests for waiver of fees during the past several years arise from the same facts, I must caution you that future requests for waiver alleging the same base may be dismissed pursuant to 47 CFR § 1.1166(c) unless complete and detailed documentation of the financial hardship is furnished. A petition for waiver must be accompanied by the required fee unless accompanied by a separate petition to defer payment due to financial hardship supported by documentation of the financial hardship.

The time has passed for further consideration of the matters submitted in 1997. We denied the request for waiver, and we requested prompt payment of the fees. A properly completed form FCC 159 and \$1,678.47 is due at the Commission within 20 days from the date of this letter. This includes 5% interest and 6% penalty from Dec 10, 1999 to Sept 30 2001. In addition to sanctions permitted by 47 CFR § 1.1164, failure to make timely payment may result in additional interest, additional penalties and administrative costs for collection as permitted by 31 USC § 3717 and 47 CFR § 1.1940, and immediate referral for collection. If you have and questions concerning this letter, please call the Revenue & Receivable Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Reger', with a stylized flourish at the end.

Mark A. Reger
Chief, Financial Officer

Copy to:

Mr. Van D. Goodall, Jr.
President
KRZI, Inc.
PostOffice Box 8093
Waco, Texas 76714-8093

KRZI, Inc.

Payoff Date: 9/30/01

Short Name	Applicant Name	Regulatory Fee	Interest Rate	Decision Date	Days Outstanding	Interest	Penalty 6%	Total Due
KRZI-AM	Van Goodall	\$ 1,000.00	5.00%	12/10/99	660	90.41	108.49	
KEYR-FM	Van Goodall	400.00	5.00%	12/10/99	660	36.16	43.40	
Totals		\$ 1,400.00				126.58	151.89	\$ 1,678.47

Shainis & Heltzman, Chartered

Communicators at Large

Suite 290

1901 F Street, N.W.

Washington, D.C. 20036

(202) 293-0011

Fax (202) 293-0810

Aaron H. Shainis
Lee J. Heltzman

Of Counsel

William H. BuRoss, III

Ruth S. Baker-Battist

Robert J. Keller

January 14, 2000

RECEIVED

JAN 14 2000

Federal Communications Commission
Office of Managing Director
445 - 12th Street, S.W., Room 1-A633
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Sir/Madam:

This is being written on behalf of KRZI, Inc. with respect to the December 10, 1999 letter from Mark Reger to Van D. Goodall, Jr., President of KRZI, Inc ("Commission Letter") received by Mr. Goodall on December 17, 1999. During 1997, KRZI, Inc., was the licensee of Station KRZI(AM), Waco, Texas, and KEYR(FM), Marlin, Texas. The Commission Letter denies a petition for waiver filed by KRZI, Inc. of the \$1,400 FCC regulatory fee for the Fiscal Year 1997. By this letter, KRZI, Inc. requests that the Commission review its ruling.

The Commission Letter is based on faulty premises. For example, the letter points out that a list of expenses provided by KRZI, Inc. contained an itemized expense listing allocating \$3,950 for FCC fees. The Commission "assumes" that this was an anticipated payment of the \$1,400 in regulatory fees and that the fee amount is therefore misstated. The Commission is incorrect in its assumptions. KRZI, Inc. did not list the FY97 fees in any financial statement. In fact, the \$3,950 filing fee reference was for its actual filing fees. KRZI, Inc. filed renewal applications for its stations as well as Ownership Reports during 1997 (BRH-970730YB and BR-970730YW). KRZI, Inc. also filed an application for minor change in licensed facilities for Station KEYR(FM) (BPH-9705051A) and an application to migrate to the expanded band for Station KRZI(AM) (BP-970616AW). The minor change application was filed as a result of a nine-plus-year rulemaking. The Commission required that the expanded band application be filed no later than June 1997. KRZI, Inc. would have preferred not to have to pay any filing fees during the year 1997, however, it was required to do so under the Commission's rules. Certainly, KRZI, Inc. should not be accused of wrong-doing by the Commission as the December 10, 1999 letter infers¹ for paying those FCC-mandated fees.

The Commission Letter also appears to challenge payments made by KRZI, Inc. for employee gas allowance, group health insurance and miscellaneous fees. It is comforting to

¹ "It appears that the plain entries are inflated . . .", Commission Letter at p. 3.

ORIGINAL

Shainis & Beltzman, Chartered

Federal Communications Commission

Office of Managing Director

January 14, 2000

Page - 2 -

know that the Commission is such an acknowledged expert in broadcasting management that it knows what is required for a station to pay in order to retain the services of its employees. The fact is that KRZI, Inc. competes against large multiple owners such as AMFM, which in 1997, when it was Capstar, owned six stations in the Waco market and controlled 76% of the revenues in the market. The benefit package which KRZI, Inc. offered its employees in 1997 did not come close to matching the packages offered by other stations in the market. Thus, KRZI, Inc. did not offer such benefits as dental insurance or a 401(k) benefit plan, as its competitors did. The decision to have an employee gas allowance and pay group health insurance were not payments that KRZI, Inc. willingly made. Rather, they were necessary business expenses made in order to retain the services of its employees. As such, they should be considered as part of its employees' salaries. KRZI, Inc. could have attempted to operate its Station without employees in order to better justify its waiver request, but it thought it better to attempt to stay in business. KRZI, Inc. did not think it wise to have its employees quit because they were not being paid a reasonably competitive wage so that the Station could squeeze out a few extra dollars to pay the Commission its yearly regulatory fees. In addition, it should be noted that there is no line item for insurance for the Station because KRZI, Inc. could not afford it.

The Commission Letter also points to an apparent discrepancy in salaries between those contained in the list of 1997 itemized expenses and those salaries contained in a separate employee personnel listing. The Commission finds an unexplained difference of \$7,342.80. That difference reflects the fact that the smaller amounts listed in the 1997 itemized expenses for KRZI, Inc. included net salaries after taxes, while the larger amounts listed in the personnel listing reflected total gross salaries. Additionally, the employee gas allowance, which is listed as a separate line item in the list of itemized expenses, makes up part of the salaries contained in the separate personnel listing.

With respect to salaries paid, the Commission Letter does not reflect the fact that in 1997 Van Goodall, Jr., President of KRZI, Inc. and General Manager of the stations in question, was not paid any salary nor distributed any payment as a principal, despite the fact that he worked at the Station from 60-80 hours a week, 52 weeks a year.

The Commission further requests an explanation concerning the efforts by KRZI, Inc. to resolve its federal and state tax delinquencies. In fact, KRZI, Inc. has largely become current on its tax liabilities. In 1997, while waiting for its ten-year-old proposed upgrade to become law, KRZI, Inc. did slip further behind in the payment of its taxes. However, the federal taxes which were owed in 1997 were paid late that year. Similarly, most of the local taxes which were owed were paid in 1998. At present, the stations are only a few thousand dollars in arrears and the business is presently paying its overdue taxes on an installment plan.

Shainis & Peltzman, Chartered

Federal Communications Commission
Office of Managing Director
January 14, 2000
Page - 3 -

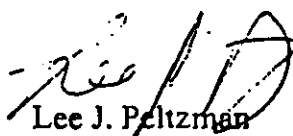
The tenor of the Commission Letter is that KRZI, Inc. should have explained itself better, including its tax arrearage and the category of its taxes which were unpaid. Of course, if KRZI, Inc. were a solvent company, it would have retained the services of an accountant to take care of all of this and provide the Commission with all of the exact figures it needed. However, if the corporation had the money to retain those accounting services, there would be no need to file for a hardship waiver in this case. (It should be noted that the present letter written by counsel is being done without compensation from KRZI, Inc.)

This would appear to be an open-and-shut case to any fair-minded reviewer. Stations which operate with a net operating loss of several thousand dollars (not a paper loss), and employ the President of the company, who serves as full-time General Manager, without any compensation are operating under a very real financial hardship. Through adjustments, however, the Commission attempts to reduce the amount that the Stations were in the red in order to make a sizable operating loss seem somewhat less. The Commission then second-guesses whether the Stations should have attempted to remain in business or simply thrown in the towel, paid their employees non-competitive wages with benefits below those of every station in the market, and refused to implement an upgrade that had been before the Commission for almost a decade, or failed to go forward with expansion efforts that the Commission had required AM stations to do pursuant to FCC-dictated timetables. Of course, if KEYR(FM) had failed to file its minor change application, after requesting a dozen delays from the FCC in order to scrape up the necessary money, the Commission no doubt would have accused the Station of proceeding through a rulemaking, and utilizing the FCC's resources with no intention of implementing the Commission's decision. Either way, KRZI, Inc. would be faced with a "no win" situation -- being second-guessed by different offices of the FCC.

KRZI, Inc. will provide the Commission with whatever other documents it reasonably requests. The FCC should keep in mind in making such requests that KRZI, Inc. neither employs an accountant nor a bookkeeper.

In view of the above, KRZI, Inc. again requests that the Commission grant it a waiver of its FY97 regulatory fees.

Sincerely,


Lee J. Peltzman
Counsel for
KRZI, INC.



FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF GENERAL COUNSEL

memorandum

TO: Donna Viert, OGC
Tom Putnam, OMD

FROM: Paul K. Cascio

SUBJECT: Reconsideration: Application for Waiver of 1997 Regulatory Fee Radio Stations
KRZI-AM, Waco, Texas and KEYR-FM, Marlin, Texas

DATE: October 2, 2000

Lee J. Peltzman, Shainis & Peltzman, representing¹ Mr. Van Goodall, Jr., President of KRZI, Inc., wrote on January 14, 2000 requesting further review of the decision dated December 10, 1999 (Decision). That decision denied Mr. Goodall's request of October 21, 1998 to review the Commission's denial of a waiver of the regulatory fees for FY 1997. We recommend denial of this request and that the demand for payment includes charges for interest and penalties. We recommend sending the response by certified mail, return receipt requested.

Mr. Peltzman's letter raises the following points: The Commission made incorrect assumptions about the itemized expenses. The Commission should not challenge station management decisions that were necessary to maintain operations. Different formats for the itemization of salaries resulted in different amounts in the forms supplied. In response to the Commission's query about unpaid taxes, Mr. Peltzman states that the station has paid most of the arrearages for its tax liability. In closing, Mr. Peltzman asserts that the station is suffering significant financial losses, but that second-guessing by the Commission creates a "no win" situation.

Mr. Peltzman seeks reconsideration of a matter that had been submitted on reconsideration. We denied Mr. Goodall's request for reconsideration dated October 31, 1998. That request was a reconsideration of our dismissal on July 16, 1998 of a requested waiver of the FY 1997 regulatory fees.

¹ At page three of the request for reconsideration, Mr. Peltzman pointedly states that the letter was composed by counsel "without compensation from KRZI, Inc.").

The burden of establishing grounds for waiver rests with the petitioner. Mr. Goodall seemingly refused to acknowledge that standard, but instead submitted documents even before 1997 with recurring inadequacies. Our letter to Mr. Goodall pointed out examples of incomplete or unexplained information and concluded with the following guidance and admonition on required proof:

Accordingly, your request is denied. Your reasons fail to meet the standard of "good cause shown [that] would promote the public interest." The Commission may grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995). Regulatees can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

10 FCC Rcd at 12761-2762.

However, submission of document numbers alone and without explanation is not enough. This is especially so when it appears that the plain entries are inflated and inaccurate. Yours did not substantiate a claim of financial hardship or establish a compelling need. The originating bases for your request are non-payment of Federal taxes in 1994 and local taxes from 1990. I am left to assume that part or all of the Federal tax liability remains due. In light of other expenses, your business decision to pay other employee benefits to the detriment of Federal tax obligations and FCC regulatory fees is not good cause to waive the 1997 fees.

Because your requests for waiver of fees during the past several years arise from the same facts, I must caution you that future requests for waiver alleging the same base may be dismissed pursuant to 47 CFR §1.1166(c) unless complete and detailed documentation of the financial hardship is furnished. A petition for waiver must be accompanied by the required fee unless accompanied by a separate petition to defer payment due to financial hardship supported by documentation of the financial hardship.

The Fiscal Year 1997 regulatory fee of \$1,400 (\$1,000 for station KRZI-AM and \$400 for KEYR-FM) is due now. The aggregate fee should be filed along with Form FCC 159 within 30 days.

Despite the detail of our explanation, Mr. Peltzman's letter does not contribute to the analysis or provide a basis for relief. The request for reconsideration should be summarily denied and demand made for immediate payment plus interest and penalties. Moreover, Mr. Peltzman should be notified that nonpayment may result in collection efforts and that his client may be subject to other administrative sanctions as permitted by 47 CFR §1.1164.